

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE A SETTLEMENT AGREEMENT IN THE LITIGATION MATTER OF MARICELLY LOPEZ AS PERSONAL REPRESENTATIVE OF THE ESTATE OF OMAR MIELES (DECEASED) AND IN HER INDIVIDUAL CAPACITY AS THE MOTHER OF OMAR MIELES V. CITY OF NORTH MIAMI , CASE NO 08-35955 CA 09, SENATE BILL 78 AND HOUSE BILL 3557 (2014-2015), UPON THE FINALIZATION OF THE CLAIMS BILL PROCESS AND THE EXECUTION OF A GENERAL RELEASE, DISCHARGING THE CITY OF NORTH MIAMI, ITS OFFICERS, AGENTS AND SERVANTS AGAINST ANY AND ALL CLAIMS AND DEMANDS IN CONNECTION WITH THIS ACTION; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, this action arises out of a car accident in 2007, where Mr. Omar Mieses, who was not wearing a seat belt, while a passenger in a vehicle was struck and killed by a police vehicle driven by former Police Officer James Thompson; and

WHEREAS, the black box indicated that Officer Thompson's police car was traveling at approximately sixty (60) miles per hour and that the driver of Mr. Mieses' vehicle ran through a blinking red light; and

WHEREAS, because of the apportioned contributory negligence, after a trial, the jury found both the City of North Miami ("City") and the driver equally responsible for the accident and apportioned fifty (50) percent liability on each; and

WHEREAS, the jury awarded a total of Three Million Five Hundred Forty-Two Thousand Dollars (\$3,542,000.00) in damages for the loss of the life of Omar Mieses; and

WHEREAS, because of the sovereign immunity cap, the City paid the estate of Mr. Mieses the mother of the deceased, Maricelly Lopez ("Plaintiff"), One Hundred Eight Thousand Five Hundred Seventy-One Dollars and 30/100 Cents (\$108,571.30), leaving a balance of approximately One Million Six Hundred Sixty-Two Thousand Four Hundred Twenty-Eight Dollars and 70/100 Cents (\$1,662,428.70); and

WHEREAS, since 2011, the Plaintiff has sought a claims bill in the Florida legislature for the balance of the jury award for approximately \$1.6 million dollars; and

WHEREAS, if this matter is not amicably resolved between the parties, the state legislature can award an amount to the Plaintiff for the \$1.6 million dollars sought by the Plaintiff; and

WHEREAS, in order to avoid the uncertainty of the legislative claims bill process and put a finality to this tragedy, the Mayor and City Council believe that it is in the best economic interest of the City to authorize the settlement of the claim with the Plaintiff for Two Hundred Thousand Dollars (\$200,000.00).

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authorization.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to execute a settlement agreement to settle the claim of MARICELLY LOPEZ AS PERSONAL REPRESENTATIVE OF THE ESTATE OF OMAR MIELES (DECEASED) AND IN HER INDIVIDUAL CAPACITY AS THE MOTHER OF OMAR MIELES V. CITY OF NORTH MIAMI , CASE NO 08-35955 CA 09, SENATE BILL 78 AND HOUSE BILL 3557 (2014-2015), upon the finalization of the claims bill process and the execution of a general release, discharging the City of North Miami, its officers, agents and servants against any and all claims and demands in connection with this action.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this 24th day of March, 2015.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ATTORNEY

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm.D.
Vice Mayor Carol Keys, Esq.
Councilman Scott Galvin
Councilman Philippe Bien-Aime
Councilwoman Marie Erlande Steril, MSW

_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)

By Senator Flores

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1 A bill to be entitled

2 An act for the relief of Maricelly Lopez by the City
3 of North Miami; providing for an appropriation to
4 compensate Maricelly Lopez, individually and as
5 personal representative of the Estate of Omar Mieleles,
6 for the wrongful death of her son, Omar Mieleles, which
7 was due to the negligence of a police officer of the
8 City of North Miami; providing a limitation on the
9 payment of fees and costs; providing that the
10 appropriation settles all present and future claims
11 related to the death of Omar Mieleles; providing an
12 effective date.

13
14 WHEREAS, on November 11, 2007, 18-year-old Omar Mieleles was
15 a passenger in the back seat of a vehicle traveling eastbound on
16 NW 46th Street in North Miami, Florida, and

17 WHEREAS, at that time and place, Officer James Ray
18 Thompson, a police officer employed by the City of North Miami
19 Police Department, while in the course and scope of his duties
20 as a police officer, negligently drove a police department
21 vehicle at a high rate of speed and collided with the vehicle in
22 which Omar Mieleles was a passenger, and

23 WHEREAS, as a direct result of the collision caused by
24 Officer Thompson's negligence, Omar Mieleles was thrown from the
25 rear window of the vehicle in which he was traveling, landed 35
26 feet from the vehicle, and died shortly thereafter from the
27 injuries he sustained, and

28 WHEREAS, the mother of Omar Mieleles, Maricelly Lopez, has
29 endured continuous mental pain and suffering since the date of

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her son's death and seeks to recover damages, individually, for loss of support, services, and companionship due to the death of her son, and

WHEREAS, the Estate of Omar Mieleles seeks to recover damages for medical expenses, funeral expenses, loss of earnings, and net accumulation of earnings, and

WHEREAS, on June 23, 2008, Maricelly Lopez, as personal representative of the Estate of Omar Mieleles and in her individual capacity as mother of Omar Mieleles, filed an action against the City of North Miami in the Miami-Dade County Circuit Court, styled *Maricelly Lopez, Plaintiff, v. City of North Miami, Defendants*, Case No. 13-2008-CA-035955-0000-01, to recover damages for the wrongful death of Omar Mieleles as a result of the negligence of a police officer of the City of North Miami, and

WHEREAS, on March 19, 2010, the case was tried before a jury that returned a verdict for damages against the City of North Miami and in favor of Maricelly Lopez, as personal representative of the Estate of Omar Mieleles and in her individual capacity as mother of Omar Mieleles, in the amount of \$3,542,000, and

WHEREAS, the jury apportioned 50 percent of the responsibility for the death of Omar Mieleles to the City of North Miami, and 50 percent to the driver of the vehicle in which Omar Mieleles was traveling as a passenger, and

WHEREAS, on April 21, 2010, a final judgment was entered against the City of North Miami for \$1,719,808.63, of which the city has paid \$108,571.30 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

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59 WHEREAS, the remainder of the judgment is sought through
60 the submission of a claim bill to the Legislature, NOW,
61 THEREFORE,

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63 Be It Enacted by the Legislature of the State of Florida:

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65 Section 1. The facts stated in the preamble to this act are
66 found and declared to be true.

67 Section 2. The City of North Miami is authorized and
68 directed to appropriate from funds of the city not otherwise
69 appropriated and to draw a warrant in the amount of
70 \$1,611,237.33, payable to Maricelly Lopez, individually and as
71 personal representative of the Estate of Omar Mieles, as
72 compensation for the death of her son due to the negligence of a
73 police officer of the City of North Miami.

74 Section 3. The total amount paid for attorney fees,
75 lobbying fees, costs, and other similar expenses relating to
76 this claim may not exceed 25 percent of the amount awarded under
77 this act.

78 Section 4. The amount paid by the City of North Miami
79 pursuant to s. 768.28, Florida Statutes, and the amount awarded
80 under this act are intended to provide the sole compensation for
81 all present and future claims arising out of the factual
82 situation described in this act which resulted in the death of
83 Omar Mieles.

84 Section 5. This act shall take effect upon becoming a law.